REMARKS

Claims 1-13 are currently pending and are under examination, claims 14-42 having been withdrawn as directed to an unelected invention.

In response to the Office Action, Claim 1 has been further amended. Several amendments are also made in the withdrawn claims (these claims being designated as *"withdrawn/currently amended"*) to keep them in correspondence with amended claim 1. Specific grounds for objection/rejection and Applicants' amendments and remarks are presented below.

It is submitted that no new matter has been introduced by the present amendments and entry of the same is respectfully requested. Applicants respectfully submit that their application is now in condition for allowance.

I. Objection to Specification

The disclosure was objected to because the prior amendment misidentified two paragraphs as [0051]. As noted by the Examiner, the second paragraphed labeled [0051] should have been [0052]. Indeed this was a typographical error which is corrected above. Note that the underscoring of certain parts of the sequence are part of the specification (not indications of "added language").

II. Rejections Under 35 U.S.C. § 112, First Paragraph - Written Description

Claims 1-13 are now rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, for two separate reasons. The rejections focus on the language of the broadest claim (claim 1)[1]

A. First Rejection

The claims were said to contain new matter. The allegedly unsupported new matter, in Claim 1, is

> ...a variant of native HK-D3 (SEQ ID NO: 1), which is a substitution variant wherein a seven residue C-terminal sequence is replaced **without** the addition of two amino acids to the amino-terminus.

[1] The remaining elected claims, Claims 2-13, were rejected as depending from a rejected base claim.

The Office asserts that the specification does disclose at paragraphs [0051-0052] variants that are encompassed by an addition of two amino acids at the amino-terminus **and** including a substitution variant wherein a seven residue C-terminal sequence is replaced. The Examiner has asked Applicants to remove the new matter in their Response, and suggested removing the word, "or" from the "and/or" in Claim 1(c).

Applicants' Response

While Applicants do not agree with the Office's position, and in view of the second rejection below, in order to move this case to allowance, they have amended claim 1 to limit the claimed variants (of native HK-D3) to SEQ ID NO:2 and SEQ ID NO:3. Applicants believe that this renders moot the ground for rejection.

B. Second Rejection

The Office maintains that claim 1 contains subject matter which was not described in the specification "in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." Claim 1 is said to be drawn to "a variant of an anti-angiogenic polypeptide having the sequence identified as either SEQ ID NO: 1 or 3."

The Office notes that satisfaction of the written description requirement requires that the specification describe the invention in "sufficient detail" so that one skilled in the art can "reasonably conclude that the inventor had possession of the claimed invention." The Office's position is that specification does not describe the structure (amino acids) in the various polypeptides that can be altered without affecting the polypeptide's function. The Action states, without providing any legal basis or authority for the statement, that "for one to be in possession of the claimed invention, the inventor would have to know the functional consequences of structural alterations." Following this, in a sweeping generalization, the Action states that "due to the limited predictability in the art, a skilled artisan would not find adequate support in the specification for variants of an anti-angiogenic polypeptide *disclosed* in claim 1.

Applicants' Response

While Applicants disagree strongly with the Office's position, and reserve the right to present evidence and otherwise dispute it in a continuing application, in order to move this case to allowance, they have amended claim 1 to limit the claimed variants (of native HK-D3) to the polypeptides designated as HK-D3v(GS) (SEQ ID NO:2) and HK-D3v (SEQ ID NO:3), both of which are fully described in the specification. Applicants believe that this renders moot the ground for rejection.

In view of the foregoing amendments and remarks , both grounds for rejection under 35 U.S.C. § 112, first paragraph, may properly be withdrawn.

III. CONCLUSION

In conclusion, it is respectfully requested that the above amendments, remarks and requests be considered and entered. Applicant respectfully submits that all the present claims are in compliance with 35 U.S.C. § 112, and therefore in condition for allowance, and respectfully requests early notice of such favorable action. Upon indication of allowable subject matter, Applicants will cancel the withdrawn claims or request the Examiner to do so by Examiner's Amendment.

Examiner Desai is respectfully requested to contact the undersigned at (202) 496-7845 with any questions or comments if they will assist in the understanding this amendment and response.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37 C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911.

Respectfully submitted,

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By_____

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